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In re Application of : DECISION ON PETITION
TAKAOKA :
Application No. 10/006,621 :
Filed: December 10, 2001 :
Attorney Docket No. 009523-0290437 :

This is a decision on the petition filed May 10, 2004, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is GRANTED.

A non-final Office action was mailed September 3, 2003, setting a three-month shortened statutory period for filing a response. In the absence of a response, the application was held abandoned and a Notice of Abandonment was mailed April 30, 2004.

Petitioner asserts that an Amendment in response to the Office action and a Petition for Two-Month Extension of Time were timely filed in the U. S. Patent and Trademark Office (USPTO) on February 3, 2004. This is evidenced by a copy of the Amendment, a copy of the Petition for Two-Month Extension of Time, and a copy of the date stamped receipt indicating receipt of the amendment and petition in the USPTO on February 3, 2004.

The Amendment and the Petition for Two-Month Extension of Time acknowledged as having been received in the USPTO on February 3, 2004 are not of record in the application file and cannot be located. However, M.P.E.P. §503 states, "A post card receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO."

Accordingly, it is concluded that the Amendment and the Petition for Two-Month Extension of Time were timely received in the USPTO, but lost after receipt thereof. Further, the revenue and accounting records indicate that the Two-Month Extension of Time fee was paid on February 3, 2004.

For the above reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Inconvenience to petitioner is regretted.

The application file is being forwarded to the technical support staff for processing the response to the September 3, 2003 Office action. From there, it will be returned to the examiner for further prosecution.

Questions regarding this decision should be directed to Jose' G. Dees at 571-272-1569.



Janice A. Falcone, Director
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